

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN GARRETT SMITH,

Petitioner,

v.

RON HAYNES,

Respondent.

CASE NO. C19-5394 RBL-JRC

ORDER AFFIRMING ORDER DENYING
PETITIONER’S MOTION TO RECUSE

This matter is before the Court on Petitioner’s Motion for Recusal of JRC¹ from Case. Dkt. #44. Petitioner is before the Court challenging his state court conviction pursuant to 28 U.S.C. § 2254. Dkt. #7. United States Magistrate Judge J. Richard Creatura was assigned to this case on May 5, 2020, after Petitioner’s Amended § 2254 Petition had been fully briefed. Dkt. #41. Shortly thereafter, Judge Creatura issued a Report and Recommendation (“R&R”) recommending that Petitioner’s Amended § 2254 Petition be denied, that Petitioner be denied a certificate of appealability, and that all of Petitioner’s pending motions be denied as moot. Dkt. #42. Petitioner filed objections to the R&R and his motion for recusal. Dkts. #43 and #44. Judge Creatura denied Petitioner’s request for recusal, finding “no reasonable basis for [] voluntary recusal” and referred the matter to the Undersigned. Judge Creatura’s Order is affirmed.

¹ “JRC” is presumably a reference to United States Magistrate Judge J. Richard Creatura.

1 A “judge of the United States shall disqualify himself in any proceeding in which his
2 impartiality might reasonably be questioned.” 28 U.S.C. § 455(a); *see also* 28 U.S.C. § 144.
3 This includes circumstances where a judge has “a personal bias or prejudice concerning a party,
4 or personal knowledge of disputed evidentiary facts concerning the proceeding.” 28 U.S.C.
5 § 455(b)(1). Recusal is appropriate if “a reasonable person with knowledge of all the facts would
6 conclude that the judge’s impartiality might reasonably be questioned.” *Yagman v. Republic*
7 *Insurance*, 987 F.2d 622, 626 (9th Cir. 1993). This is an objective inquiry concerned with
8 whether there is the appearance of bias, not whether there is bias in fact. *Preston v. United States*,
9 923 F.2d 731, 734 (9th Cir. 1992); *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir. 1980).

10 Petitioner does not raise any valid basis on which to question Judge Creature’s
11 impartiality. First, Petitioner’s complaints are clearly related to Judge Creatura’s
12 recommendation that Petitioner’s Amended § 2254 Petition be denied. *See* Dkt. #44 at 1 (Judge
13 Creatura’s “outrageous [R&R] is laced with lies, and so totally usurps the Court that it evinces
14 the dangerous venality of JRC and/or complete incompetence”). “[A] judge’s prior adverse
15 ruling is not sufficient cause for recusal.” *United States v. Studley*, 783 F.2d 934, 939 (9th Cir.
16 1986); *see also Taylor v. Regents of Univ. of Cal.*, 993 F.2d 710, 712 (9th Cir. 1993) (“To warrant
17 recusal, judicial bias must stem from an extrajudicial source.”). Petitioner’s disagreement with
18 the R&R does not serve as a basis for recusal.

19 Secondly, Petitioner points to the fact that he has initiated a state court action naming
20 Judge Creatura “along with 20 other State of Washington citizens. (Since that time, other
21 Defendants have been duly added, including Ronald B. Leighton, the district judge in my federal
22 habeas case, a fact that evinces even more Obstruction of Justice by means of Conflict Interest
23 that is as obvious as it is foolish).” Dkt. #44 at 2. Putting aside that Petitioner provides no
24 explanation of the basis for his state court action or the facts surrounding it, Judge Creatura sets

1 forth at length the Judicial Conference’s Committee on Codes of Conduct’s recommendation
2 against recusal in such a situation. Dkt. #46 at 3–4 (noting that automatic recusal would
3 encourage manipulation of the judicial process and instead advising consideration of “the nature
4 of the complaint, the applicable law, and other relevant circumstances”) (quoting *Committee on*
5 *Codes of Conduct Advisory Opinion No. 103: Disqualification Based on Harassing Claims Against*
6 *Judge*, in 2B GUIDE TO JUDICIARY POLICY at 187–89).² Petitioner does not provide sufficient detail
7 of his state court action on which to reasonably question bias.

8 Accordingly, for the reasons set forth above, Petitioner’s Motion does not provide a
9 reasonable basis for the appearance of bias and recusal is not warranted. Judge Creatura’s Order
10 on Motion to Recuse (Dkt. #46) is AFFIRMED.

11 DATED this 29th day of June, 2020.

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14 RICARDO S. MARTINEZ
15 CHIEF UNITED STATES DISTRICT JUDGE
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24 ² Available at: https://www.uscourts.gov/sites/default/files/guide-vol02b-ch02-2019_final.pdf.